

APPEAL NO. 031345  
FILED JULY 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 28, 2003. The hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from September 9 through November 27, 2002. The claimant appeals the disability determination and argues that disability should have continued through February 10, 2003. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Reversed and rendered.

With regard to the disability issue, the evidence reflects that, due to the compensable injury, the claimant was taken off work by his doctor beginning September 9, 2002, and was not given a restricted return-to-work release until November 27, 2002. The claimant testified, and the carrier's documentary evidence supports, that he took the restricted work release to his employer in order to resume working. According to the claimant, his employer<sup>1</sup> could not accommodate the work restrictions. Carrier's Exhibit No. 5, the recorded statement of EM, appears to support the claimant's testimony. There is no indication that the employer tendered a bona fide offer of employment to the claimant. The claimant never returned to work for the employer, but did obtain new employment on February 10, 2003. The hearing officer determined that the claimant had disability from September 9 through November 27, 2002. There is no indication that the hearing officer found the restrictions to be suspect or believed that the claimant's restricted release allowed him to resume his regular duties.

Disability is defined as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). We have held that where a medical release is conditional and not a return to full-duty status because of the compensable injury, disability, by definition, has not ended unless the employee is able to obtain and retain employment at wages equivalent to the preinjury wage. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. We have also held that a claimant under a light-duty release does not have an obligation to look for work or show that work was not available within his restrictions. See Texas Workers' Compensation Commission Appeal No. 970597, decided May 19, 1997, and cases cited therein. This is not to say that a light-duty release is tantamount to irrefutable proof of disability. Texas Workers' Compensation Commission Appeal No. 992019, decided October 27, 1999. However, in the present case, the hearing officer gave no explanation and made no findings of

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<sup>1</sup> It appears that although the claimant transferred to a different job location approximately one month after the date of injury, the claimant's employer remained (employer) from the date of injury until the time he was separated from his employment.

fact indicating that there was any reason to believe that the claimant was able to return to his preinjury job duties upon receiving the restricted return to release on November 27, 2002. Accordingly, we reverse the hearing officer's disability determination and render a decision that the claimant had disability from September 9, 2002, through February 10, 2003.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge